

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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M.C., by and through his Parents K.C. and	:	
C.C., and K.C. and C.C., individually,	:	NO. 10-CV-2804
	:	
Plaintiffs	:	
	:	
v.	:	
	:	
Wallingford-Swarthmore School District,	:	
	:	
Defendant	:	The Honorable Norma L. Shapiro

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**MOTION TO DISSOLVE PRELIMINARY INJUNCTION OF JULY 12, 2010**  
**ON BEHALF OF DEFENDANT**  
**WALLINGFORD-SWARTHMORE SCHOOL DISTRICT**

Defendant, Wallingford-Swarthmore School District, for the reasons detailed below, respectfully requests that this Honorable Court dissolve the Preliminary Injunction entered on July 12, 2010, and in support thereof avers as follows:

1. Plaintiffs filed a Motion for Preliminary Injunction on June 16, 2010, seeking the entry of a Preliminary Injunction from this Honorable Court ordering that Defendant fund, as part of Plaintiff M.C.'s pendent or stay-put placement during the course of the current matter, (1) 80 hours of direct one to one reading instruction at Lindamood Bell, (2) 20 hours of occupational therapy and/or physical therapy at A Total Approach and (3) During the 5 weeks of the Shining Stars Program 90 minutes of speech therapy sessions with Sue Caspari or 7.5 hours of therapy. (Doc. 2).

2. On June 30, 2010, Defendant filed an Answer to the Plaintiffs' Motion for Preliminary Injunction opposing the same on the basis that the Defendant, not Plaintiffs, should be permitted to determine the list of providers of these services. (Doc. 5; Doc. 6).

3. It has been held that pendent placement does not include a specific vendor, provider, methodology, or modality. *Pardini v. Allegheny Intermediate Unit*, 420 F.3d 181, 188 (3d Cir. 2005) *citing Johnson v. Special Education Hearing Officer*, 287 F.3d 1176, 1179 (9<sup>th</sup> Cir. 2002); *M.K. v. Roselle Park Bd. of Educ.*, 2006 U.S. Dist. LEXIS 79726, \*29-\*30 (D.N.J. 2006)(unpublished) *citing Lunceford v. District of Columbia Bd. of Educ.*, 745 F.2d 1577 (D.C. Cir. 1984); *John M. v. Bd. of Educ. of Evanston Township High School District 202*, 502 F.3d 708, 716 (7<sup>th</sup> Cir. 2007).

4. On July 12, 2010, this Honorable Court granted the Plaintiffs' Motion and entered a Preliminary Injunction granting the Plaintiffs' requested relief. (Doc. 12).

5. This Honorable Court, in granted the Plaintiffs' Motion, noted that Defendant "has not yet specified vendors who are qualified and available to provide the services for summer 2010, or a date by which time they would be selected." (*Id.* at p. 2).

6. Defendant has now determined the vendors available to provide the services to Plaintiff M.C. and which Defendant will use if the Preliminary Injunction is dissolved by this Honorable Court.

7. Defendant proposes that speech and language services be provided by Carolyn A. Macrina.

8. Ms. Macrina is qualified to provide Plaintiff M.C. with the services for the summer of 2010 and a copy of her CV is attached hereto as "Exhibit A."

9. As noted in Ms. Macrina's CV, she has training in working with students with apraxia of speech and 23 years of experience in working with school age students.

10. Ms. Macrina has been providing services to Plaintiff M.C. in his current placement at the Shining Stars Program during the summer of 2010 and could provide some of the additional hours of services by integrating the same into the school setting.

11. Defendant proposes that reading instruction be provided by Diane Seider, who is a Wilson Reading Specialist.

12. Ms. Seider is qualified to provide services to the Student for the summer of 2010 and a copy of her CV is attached hereto as Exhibit B.

13. Ms. Seider is certified in the Wilson Reading program.

14. Plaintiff M.C. was provided reading instruction using the Wilson Reading program in his school year placement, chosen by the Parents, at a private school in New Jersey.

15. Defendant proposes that the occupational therapy be provided by Megan Sheppard.

16. Ms. Sheppard is qualified to provide Plaintiff M.C. with occupational therapy for the summer of 2010 and a copy of her CV is attached hereto as "Exhibit C."

17. Ms. Sheppard currently provides occupational therapy to Minor Plaintiff M.C. in the course of The Shining Stars Program and will be able to integrate some of the additional hours of services into the school setting.

18. Ms. Sheppard, Ms. Seider and Ms. Macrina are available to provide services to the Plaintiff M.C. for the summer of 2010.

WHEREFORE, Defendant respectfully requests that this Honorable Court enter an order (1) Dissolving the Preliminary Injunction entered on July 12, 2010; (2) Ordering Defendant to pay for any services, if any, provided under the Preliminary Injunction from July 12, 2010, until

the entry of a court order, and (3) Order the Defendant to provide any remaining hours services owed under pendent placement through the providers selected by the District.

Respectfully submitted,

FOX ROTHSCHILD LLP

BY:

  
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Dated: July 16, 2010